

**PART 9 4-900 PUBLIC RESERVOIR MANAGEMENT AND PROTECTION
OVERLAY DISTRICT**

4-901 Purpose and Intent

In accordance with the objectives of the Comprehensive Plan, the establishment of the Public Reservoir Management and Protection Overlay District (PRMPOD) is intended to encourage and promote the protection of the Warrenton Reservoir, Fauquier County's public water supply reservoir, by preventing the degradation of that reservoir as a result of improper land management, or the malfunctioning of those tools, instruments, supplies, materials or equipment associated with the land uses within the reservoir watershed.

Regulations within the overlay district are intended to encourage land uses and activities which will be compatible with water quality protection; to provide a means for specific review and approval of residential, commercial, industrial and other development proposals that may have adverse water quality impacts; and to assure that structures and uses within the Overlay District will be developed in a manner that will serve the health, safety and welfare objectives of preserving the environmental integrity of the public water supply reservoir.

4-902 District Boundary

Those areas included within the boundary of the PRMPOD shall be delineated by Ordinance of the Board of Supervisors and shall not exceed the limits of the reservoir watershed using the most current and best available data. A map showing the boundary of the PRMPOD shall be kept on file in the Office of Zoning, Permitting and Inspections. The Board of Supervisors may modify the PRMPOD boundary as necessary as new assessment data becomes available. Site specific modifications may be amended administratively in accordance with the process set forth in Section 4-904.

4-903 Buffer Boundaries

To minimize adverse effects of human activities on the public water supply within the PRMPOD, a vegetated strip that includes ground cover, shrub and tree canopy layers that is effective in retarding runoff, preventing erosion and filtering non-point source pollution from runoff shall be retained, if present, and established either by planting indigenous species or allowed to re-vegetate naturally, along the edges of all water bodies. These shall include perennial and intermittent streams, ponds, reservoirs and wetlands. This strip shall be termed "Buffer." Buffers shall be delineated by Ordinance of the Board of Supervisors and shall be based on the study of hydrology and soils, using the most current and best data available. Buffers shall be sized as follows:

1. A three hundred (300) foot wide Buffer shall be maintained along the edge of the Warrenton Reservoir and the Airlie Reservoir. The required setback distance shall be measured from the 450' contour surrounding the normal pool elevation of the Warrenton Reservoir and from the 500' contour surrounding the Airlie Reservoir.
2. A one hundred (100) foot wide Buffer shall be maintained along both sides of any perennial water body within the reservoir watershed. The one hundred (100) foot wide Buffer shall be measured from the top of the bank of the perennial stream or the outer limit of the 100-year floodplain, whichever is greater. Where non-tidal wetlands, connected by surface flow and contiguous to perennial streams or floodplains are present, the one-hundred (100) foot Buffer shall be measured from the outer edge of the non-tidal wetland or the outer limit of the 100-year floodplain, whichever is greater.
3. A fifty (50) foot wide Buffer shall be maintained along both sides of any intermittent stream within the reservoir watershed. The fifty (50) foot wide Buffer shall be measured from the top of the bank of the intermittent stream or the outer limit of the 100-year floodplain, whichever is greater. Where non-tidal wetlands connected by surface flow and contiguous to intermittent streams are present, the fifty (50) foot wide Buffer shall be measured from the outer edge of the non-tidal wetlands or the limit of the 100-year floodplain, whichever is greater.

A map showing Buffers within the PRMPOD shall be kept on file in the Office of Zoning, Permitting and Inspections. The Board of Supervisors may modify the Buffer as necessary as new assessment data becomes available. The Buffers shown on the adopted map shall be deemed "Buffer" for purposes of this article, except where a site-specific delineation is processed and approved pursuant to Section 4-904.

4-904 Site Specific Delineation of Buffer Boundaries

1. When water bodies, floodplains, wetlands or hydric soils are present on or within three-hundred (300) feet of development sites, a reliable site-specific delineation prepared by a qualified professional shall accompany the submittal of any major site plan, preliminary subdivision plat, or application for land division within the PRMPOD.

The site-specific delineation shall:

- A. Identify the location of the following on or within three-hundred (300) feet of the development site: perennial or intermittent streams, water bodies, wetlands, hydric soils and the 100-year floodplain, as determined by the Federal Emergency Management Agency (FEMA) or a Letter of Map Revision (LOMR).
 - B. Be conducted using a stream classification protocol approved by the County Soil Scientist.
 - C. Be submitted for review and approval by the County Soil Scientist as part of the site plan and preliminary plat submission.
 - D. Take precedence over the PRMPOD map.
2. Buffer boundaries shall be adjusted as deemed necessary based upon the site-specific delineation as reviewed and approved by the County Soil Scientist.
 3. Any property owner or applicant for development may at any time request refinements to the Buffer delineated on the County's official map by submission of a site-specific delineation consistent with the above provisions for evaluation and approval by the County Soil Scientist.

4-905

Use Limitations

1. The following uses are prohibited within the PRMPOD:
 - A. The storage, production, or disposal of hazardous wastes as defined in either or both of the following:
 - (1) Superfund Amendment and Reauthorization Act of 1986, as amended (<http://www.epa.gov/region5/defs/html/sara.htm>); and
 - (2) Identification and Listing of Hazardous Wastes, C.F.R., Title 40, Part 261 (http://www.access.gpo.gov/nara/cfr/waisidx_04/40cfr261_04.html).
 - B. Treatment of hazardous material, except emergency spill cleanup operations or rehabilitation programs authorized by a government

agency to treat hazardous material present at a site prior to the adoption of this Ordinance;

- C. Any business or commercial activity that stores, uses, or disposes of hazardous material, including but not limited to dry cleaning, dyeing, printing, photo processing, unless all facilities and equipment are designed and operated to prevent the release or discharge of hazardous materials and have been certified to be in compliance with hazardous material regulations;
 - D. Automobile service stations;
 - E. Junkyard/automobile graveyard;
 - F. Land applications of industrial wastes to exclude animal waste applications;
 - G. Animal waste storage facilities with the exception of those designed in accordance with federal standards and approved by the John Marshall Soil and Water Conservation District.
 - H. Sewage treatment systems and private water purification plants or facilities which discharge into an open ditch or water body;
 - I. Sanitary facilities;
 - J. Sewage sludge storage facilities.
2. All land uses prohibited within the PRMPOD are prohibited within the Buffer. Additional land uses prohibited within the Buffer are:
- A. On-site wastewater treatment and disposal systems;
 - B. Kennels;
 - C. Confined animal feeding operations;
 - D. Animal waste storage;
 - E. Commercial or community trash containers and dumpsters;

- F. Activities involving the storage, manufacture, or any type of distribution of petroleum, chemical or asphalt products or any materials hazardous to a water supply (as defined in the **Hazardous Materials Spills Emergency Handbook, American Waterworks Association, 1975**, as revised) including specifically the following general classes of materials:
- (1) Oil and oil products;
 - (2) Radioactive materials;
 - (3) Any material transported and stored in large quantities (drums of 55 gallons or more) which is a very soluble acid or base, causes abnormal growth of an organ or organism, or is highly biodegradable with a strong oxygen demand;
 - (4) Biologically accumulative poisons;
 - (5) The active ingredients of poisons that are, or were ever, registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act -7 U.S.C. s/s136 et seq. (1996) (<http://www.epa.gov/region5/defs/html/fifra.htm>);
 - (6) Substances lethal to animal and aquatic life.

4-906 Submission Requirements For All Uses and Structures

1. All applications for zoning permits, subdivisions and other land divisions, and site plans shall display the appropriate stream, wetland, hydric soils and floodplain delineations and the associated required Buffer areas and boundaries on all plans and plats of development submitted for review within the PRMPOD.
2. In conjunction with building permit submittal, all applications for zoning permits, subdivision and other land divisions, and site plans that exceed twenty-five hundred (2,500) square feet of disturbance shall provide an Erosion and Sediment Control Plan for review by the John Marshall Soil and Water Conservation District and an over-lot grading plan for review by the Zoning Department. No Permit in Lieu of a Plan shall be granted.

3. Any application for a major site plan or preliminary subdivision of three lots or more shall be accompanied by a comprehensive project description including:
 - A. Topographic, hydrologic and vegetative site characteristics;
 - B. A Type 1 soil map or preliminary soil map and report meeting the standards of the County Soil Scientist;
 - C. The proposed use of the site and structures;
 - D. The location and extent of impervious surfaces;
 - E. On-site processes and materials to be used and/or stored;
 - F. Methods for the containment of any materials, including spills or leachate from any materials stored on the site that could contaminate drinking water sources.
 - G. The type and location of all proposed stormwater management facilities and best management practices.
4. All applicants for subdivisions, other land divisions and major and minor site plans shall hold a pre-submission meeting with County staff to review the project proposal.
5. All applications for subdivisions, other land divisions and major and minor site plans shall be forwarded to the agency that owns or manages the reservoir or impoundment for review and comment.

4-907

Additional Standards for All Uses and Structures

1. The following requirements apply to all uses and structures within the PRMPOD, unless otherwise exempted pursuant to Section 4-908 of these provisions:
 - A. No more land shall be disturbed than is necessary to provide for the proposed use or development.
 - B. Existing vegetative cover shall be preserved to the maximum extent consistent with the use or development proposed.

- C. Impervious cover shall be minimized to be consistent with the use, development or redevelopment proposed.
 - D. Septic Pump-Out must be accomplished for all on-site septic systems located within the overlay district at least once every five years.
2. These additional requirements apply within the Buffer portion of the PRMPOD unless otherwise exempted pursuant to Section 4-908 of these provisions:
- A. Vegetative cover in the Buffer shall include ground cover, shrub and canopy layers. It shall be retained, if present, or established either by planting indigenous species or allowed to vegetate naturally. Removal of vegetation in the Buffer shall be allowed only as provided in paragraphs C and D.
 - B. Invasive/non-native species and noxious weeds may be controlled in accordance with federal and state management programs and Virginia Cooperative Extension Service recommendations.
 - C. Within thirty-five (35) feet of the top of the water body bank or stream bank and on land classified as non-tidal wetland:
 - 1. Invasive/non-native species, noxious weeds, or diseased, dying and dead trees, shrubbery or vines may be removed provided that such removal is completed in a manner that does not cause erosion. Where removed, they shall be replaced with indigenous vegetation that is equally effective in retarding runoff, preventing erosion, and filtering non-point source pollution from runoff.
 - 2. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where bank erosion is an existing or potential problem that outweighs any positive effects that fallen trees or woody debris may have on the stream's or water body's ecosystem.
 - D. Beyond thirty-five (35) feet from the top of the water body bank or stream bank and outside of non-tidal wetlands, in addition to those conditions in paragraph B, silviculture thinning may be conducted

under the direction of a professional forester.

- E. Shoreline or stream bank erosion control projects shall be permitted, but shall not commence within the Buffer unless specifically approved pursuant to a plan prepared and approved under the provisions of Section 4-908.3 of this district.
- F. Any private pedestrian path within the Buffer shall be pervious, constructed and surfaced so as to effectively control erosion and shall be the minimum width necessary to provide reasonable access within the Buffer.
- G. With the exception of providing access to parcels for which there is no alternative access, neither driveways nor private streets shall be constructed in the Buffer.
- H. On agricultural lands, the Buffer shall be managed to prevent concentrated flows of surface water from breaching the Buffer.
- I. Minimum lot sizes and setbacks shall be as follows:
 - 1. No land within the Buffer may be divided or incorporated into a new buildable lot unless such a lot also includes at least 20,000 square feet of contiguous area outside the Buffer.
 - 2. In addition to the other setback requirements of the zoning district, a minimum 25 foot setback shall be provided between any principal structure and the Buffer.
- J. Where land uses such as agriculture or silviculture cease and conversion to non-agricultural land use is proposed, the full Buffer shall be maintained in its natural state, allowed to re-vegetate naturally, or shall be planted as an indigenous riparian forest with ground cover, shrub and canopy layers.

4-908

Exemptions and Encroachments

- 1. In areas other than the 300' wide buffers surrounding the Warrenton Reservoir and the Airlie Reservoir, agricultural activities may encroach to within thirty-five (35) feet of a perennial or intermittent stream or other water body, as measured from the top of the bank, when a conservation plan approved by the JMSWCD Board addressing the primary water

quality issues (erosion control or nutrient management) on the adjacent land is being implemented provided that the combination of the undisturbed Buffer and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least equivalent to the one hundred (100) foot wide natural Buffer on a perennial stream or the fifty (50) foot wide Buffer on an intermittent stream. If nutrient management is identified as a primary water quality issue, a Nutrient Management Plan, consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15), administered by the Virginia Department of Conservation and Recreation, must be developed and implemented.

2. Silviculture activities in Buffers are exempt from the requirements of this Overlay District provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Buffers. In the event that these practices are not followed, the Buffer standards as required by this Overlay District shall apply.
3. Stream restoration and shoreline erosion control projects that meet all state and federal requirements shall be allowed upon approval by the John Marshall Soil and Water Conservation District. Trees and woody vegetation may be removed, necessary control techniques employed and appropriate vegetation established to protect or stabilize the shoreline or stream bank in accordance with the best available technical advice and applicable permit conditions or requirements. Non-vegetative structural means of stabilization shall be utilized only where it is demonstrated that vegetative techniques cannot be effectively utilized.
4. In areas other than the 300' wide buffers surrounding the Warrenton Reservoir and the Airlie Reservoir, the construction, installation, operation and maintenance of electric, gas and telephone transmission lines, and activities of the Virginia Department of Transportation and the construction, installation and maintenance by public agencies of water and sewer lines, including water and sewer lines constructed by private interests for dedication to public agencies shall be allowed provided that:
 - A. To the extent practical, the location of all construction shall be outside the Buffer;

- B. Road and utility crossings will be limited to the shortest path possible and that which causes the least amount of land disturbance and alteration to the hydrology of the watershed;
 - C. Land disturbance shall be limited to the least amount needed to accommodate the use;
 - D. Existing vegetative cover shall be preserved to the maximum extent possible;
 - E. Wherever possible, disturbed areas shall be planted with indigenous trees and shrubs or allowed to re-vegetate naturally.
5. Vegetative cover within the Buffer may be removed or pruned beyond the extent allowed in Section 4-907 upon receipt of a permit issued by the Zoning Administrator subject to the following procedures and standards:
- A. The permit application shall include the following:
 - (1) the reason for the requested pruning or removal;
 - (2) the area in which vegetation is to be pruned or removed;
 - (3) the location of all trees six inches or greater in diameter at breast height;
 - (4) the location and type of replacement vegetation proposed.
 - B. The plan shall be approved upon a determination by the Zoning Administrator that the proposed activity is in accordance with the requirements of this district.
6. On-site wastewater treatment and disposal systems within the Buffer having a valid approval permit from the Fauquier County Health Department as of (Month/Date/2006 – date of adoption) may be installed so long as the permit remains valid.
7. In circumstances where the application of the Buffer criteria may result in the effective loss of a reasonable buildable area on a lot or parcel recorded before (Month/Date/2006 – date of adoption), an Exemption may be granted by the Zoning Administrator subject to the following standards:
- A. Where an encroachment into the required Buffer is proposed, the following standards shall apply:

- (1) The proposed encroachment shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
- (2) The proposed encroachment shall be located on those portions of the site and in a manner that will be least disruptive to the natural functions of the Buffer;
- (3) Impervious areas shall be limited to the minimum amount necessary to achieve a reasonable buildable area;
- (4) A vegetated area meeting District standards as described in Section 4-907 (2) A. that will maximize water quality protection, mitigate the effects of the encroachment, is equal in area to that of the encroachment and is contiguous with the existing Buffer shall be established on the lot or parcel;
- (5) In no case shall the Buffer width be reduced by more than 50%, with such reduction in width being measured from the landward edge of the Buffer;
- (6) Low Impact Development practices may be required where applicable as determined by the County Engineer.

4-909

Non-complying Land Uses and Buildings

1. Uses and structures prohibited in the PRMPOD that are lawfully in existence on (Month/Date/2006 – date of adoption) may continue to be maintained but may not be enlarged or expanded, unless such enlargement or expansion creates no additional impervious surface and meets all other provisions of this overlay district. In the event that the non-complying use changes, all requirements of the Overlay District shall apply.
2. Nothing in the requirements of this Overlay District shall affect the reconstruction of structures destroyed or damaged by any casualty, if such reconstruction is otherwise permitted by law and so long as the structure does not further encroach into the required Buffer and creates no more impervious area than existed previously.

4-910**Enforcement**

1. Any building erected or improvements constructed contrary to any of the provisions of this Overlay District and any land disturbing activity regardless of area contrary to any of the provisions of this Overlay District and any removal of vegetation in Buffer areas contrary to any of the provisions of this Overlay District shall be and is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Overlay District, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or land in violation of the provisions of this Overlay District shall be subject to the enforcement provisions of this Article.
3. Upon becoming aware of any violation of any provisions of this Overlay District, the Zoning Administrator shall serve a notice of violation on the property owner, the person committing or permitting the same either in person or by registered or certified mail to the property or the owner's address. Such notice shall specify the provisions of the Overlay District which have been violated, the measures needed to remedy the violation, and a reasonable time in which to remedy the violations. Failure to take steps to comply with such notice within the time provided for therein shall constitute a separate violation of the provisions of this Overlay District.
4. Restoration of the Buffer shall be performed as necessary to meet the intent of this Overlay District and the requirements herein.
5. Trees illegally removed from the Buffer shall be replaced by indigenous species trees of a type and caliper determined by the Virginia Department of Forestry to be viable in the affected area.
6. The Zoning Administrator may require the submission of a Water Quality Impact Study (WQIS) as a condition for remedying a violation. In addition, a restoration plan acceptable to the Zoning Administrator for any removal of vegetation from the Buffer may be required.
7. The Zoning Administrator may apply to the Fauquier County Circuit Court for injunctive relief to enjoin a violation or a threatened violation of any provision of this Chapter.